

Congress just stepped into the dispute over the right of Chicago and two communities in California to use eminent domain on behalf of local homeowners. **Representative John Campbell** (R-CA) today introduced a bill titled The Defending American Taxpayers from Abusive Government Takings Act which would prohibit the four major government sponsored mortgage providers from buying loans in any community who do what is proposed in Chicago, Berkeley and San Bernardino County, California.

To summarize the controversy, San Bernardino County proposed in June to use eminent domain to invoke eminent domain to take underwater mortgages from investor pool and restructure them to reflect the current market value of collateral to provide relief to homeowners. The municipality would then package the loans into pools and sell them on the secondary market.

There was an immediate negative reaction by at least twenty trade organizations led by SIFMA the lobbying group representing the securities industry. The Federal Housing Finance Agency (FHFA) as conservator for GSEs also joined in and has just ended a period of public comment on the subject. All opposing parties maintain that such seizures constitute an unconstitutional use of the eminent domain power and an unwarranted abridgement of investors' property rights. SIFMA has also made it clear they would litigate any eminent domain action and that it would be unlikely that any further loans would be available to homeowners in those communities.

**Campbell** bases his legislation on a claim that if seizing of mortgage loans becomes widespread, the GSEs will sustain losses of up to 30 percent in their private-label residential mortgage-backed securities portfolio putting taxpayer dollars at risk. He further maintains that current and future retirees are also at risk because of the significant amounts of these securities held in public and private retirement funds, 401(k) programs and other investment vehicles. He further maintains that any takings would break a private contract agreed to by homeowners and their lenders.

The proposed law would amend the charters of the two GSEs to prohibit them and would outright ban the Federal Housing Administration (FHA) and the Veterans Administration (VA) from purchasing mortgage loans originated in counties where a municipality has seized a mortgage loan using eminent domain within the previous 10 years.

As an alternative to the eminent domain program, **Campbell** and Representative Gary Peters (D-MI) have introduced H.R. 5940, the Preserving American Homeownership Act. This bill would direct FHFA to establish a program to pilot principal reduction programs for loans owned or guaranteed by Fannie Mae and Freddie Mac. This could also be an interesting development as FHFA's acting director Edward J. DeMarco has been adamant about refusing to permit principal reductions despite considerable pressure from the Department of the Treasury.

**"There is no question that we need to take steps to assist American homeowners in distress," Campbell said when introducing his bill. "But, these steps must not undermine rule of law, must not engage in corruptive and abusive practices, must protect the American taxpayer, and must not further degrade the housing market. The eminent domain programs in question are atrocious, corruptive, irresponsible and unconstitutional. We do need to fix the housing sector, but it must be done in a way that does not break the law and does not enrich undeserving, politically-connected entities in cities and counties with unsustainable budget deficits."**

The Mortgage Bankers Association (MBA) quickly endorsed the legislation. MBA President and CEO David H. Stevens issued a statement which said in part, "While the problem of underwater borrowers continues to slow the housing recovery, using eminent domain to take those mortgages is not a responsible answer. Beyond the obvious legal issues of using eminent domain in such a radical way, the government seizing mortgages would set a precedent that will hurt those communities and borrowers it is most designed to help.

**"Congressman Campbell's** bill, on top of limiting the future cost to taxpayers associated with the losses that would be incurred by Fannie Mae, Freddie Mac, FHA and the VA, sends a clear message to municipalities considering eminent domain -- if you do this, there will be consequences for your constituents, consequences that will severely impact not only potential home buyers and home owners, but the value of every home in your area.

Kenneth E. Bentsen, Jr., executive vice president for SIFMA also commended Campbell saying of the legislation, "(It) will help protect our mortgage markets, mortgage borrowers, investors and main street savers by prohibiting any mortgage seized through eminent domain from using a government guarantee and putting taxpayers at risk. The use of eminent domain to seize mortgages not only lacks legal and constitutional validity; it has the potential to scuttle a housing market that is working towards recovery and does so at the expense of pension funds and mutual fund investors.

**Campbell's** bill has been referred to the House Committee on Financial Services.